Supreme Court, U.S.
FILED
04 458 JUL 17 2004
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

CONNIE MARSHALL

Petitioner

v.

JERRY BOWLES, JUDGE

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Connie Marshall, Pro Se
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QUESTIONS PRESENTED FOR REVIEW

1. Whether a circuit court judge has the jurisdiction to deny United States Constitution First Amendment Rights.

2. Whether a circuit court judge has the jurisdiction to deny United States Constitution Fourteenth Amendment Rights.

3. Whether a circuit court judge willfully acting out of his jurisdiction and violating United States Constitution Rights is protected by any laws.

4. Whether a circuit court judge was served according to USPS rules.

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Collateral Estoppel - The collateral estoppel bar is INAPPLICABLE when the claimant did not have a full and fair opportunity to litigate the issue decided by the other court. Id. at 101. Thus a claimant can file a federal suit to challenge the adequacy of state procedures.

Res Judicata - Under res judicata, a final judgment of the merits of the action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. The Plaintiff states that she HAS NEVER BEEN TO COURT.

Soverign Immunity - The 11th Amendment DOES NOT bar suits against the state in Federal Court filed by citizens of the same state. Also, "Where relief is sought under general law from wrongful acts of state officials, the sovereign immunity under the Eleventh (11th) Amendment DOES NOT extend to wrongful individual acts.

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Connie Marshall respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Sixth Circuit in the above-entitled proceeding.

OPINIONS

The opinion of the Court of Appeals appears at Appendix 1. The opinion of the Court of Appeals denying rehearing appears at Appendix 2. The opinion of the United States District Court appears at Appendix 3. The opinion of the United States District court denying rehearing appears at Appendix 4.

JURISDICTION

The date on which the United States Court of Appeals for the Sixth Circuit decided my case was March 15, 2004. A timely petition for rehearing was denied by the United States Court of Appeals on April 20, 2004, and a copy of the order denying rehearing appears at Appendix B. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

The First Amendment of the United States Constitution and the Fourteenth Amendment of the United States Constitution.

STATUTES

(Restricted Delivery Mail)

USPS(UNITED STATES POSTAL SERVICE) 3.1 Section (b). Also, Kentucky Civil Rule 4.01(1)(a).

STATEMENT OF THE CASE

This case is a Federal Individual Capacity Complaint against Jerry Bowles, Judge regarding violations of federal law which includes the 1st Amendment and the 14th Amendment. This case makes no reference to being an appeal of a decision made by Jerry Bowles from another court.

Res Judicata does not apply to this case because the Plaintiff did not have a fair opportunity to be heard, as she and her Attorney have NEVER BEEN ALLOWED TO GO TO COURT and the opposing side has been given this opportunity by Jerry Bowles, Judge. Under Res Judicata, a final judgment of the merits of the action precludes the parties or their privies form relitigating issues that were or could have been raised on that action. If the Plaintiff was denied the right to go to court and has NEVER BEEN TO COURT WITH OR WITHOUT AN ATTORNEY how could she have raised any issues if she was never allowed to go to court by Jerry Bowles, Judge.

Under the Rooker Feldman Doctrine an issue is not inexticably intertwined with the state court claim if the party had no "reasonable opportunity" to present the issue in state court, E.G. Wood, 80 F, 3d 1543, 1547 (11th Circuit 1983). For the record, the Plaintiff Connie Marshall has NEVER BEEN TO COURT WITH OR WITHOUT AN ATTORNEY.

The Plaintiff was not in court on January 14, 2002 or March 5, 2002 because her Federal right to go to court was violated by Jerry Bowles, see Harris v. Harvey, 605 F. 2d 330 (7th Cir. 1979) cert. denied, 445 U.S. 938, 100 S. Ct. 1331, 63 L.Ed. 2d 772 (1980). The Plaintiff states that Jerry Bowles, Judge violated her constitutional rights, including her rights to redress of greivances, attorney representation,

due process and freedom of speech by deliberately committing the following violations:

1) July 2001 through October 2001 - Notice Motion for Custody, Visitation and Case Management Conference regarding the abuse of my grandchildren, in the hands of the state, were held for seven months, my disabled grandchild was being repeatedly mentally abused, beaten, made to stand in a barn, and starved to the point that his brother had to put food in his pocket to feed him. (Due Process not used)
2) January 14, 2002 - When I finally received a court date regarding the aforementioned # 1. After waiting seven months, I arrived 15 minutes early for court and they had already had court without my presence, as I, the Plaintiff was denied my federal right to go to court by Jerry Bowles, Judge. A fraudulent court order was signed by Jerry Bowles, Judge. Only the opposing side was present in the courtroom. (1st and 14th Amendment Violations)
3) March 5, 2002 - I went back to the court building with an attorney regarding the aforementioned #2. Jerry Bowles, Judge denied the Plaintiff and her Attorney the right to present our side or even be in the courtroom. Only the opposing side was allowed to present their side and only the opposing side was present in the courtroom. (1st and 14th Amendment Violations)
4) October 23, 2002 after being once again denied the right to go to court as stated in the aforementioned #3. I went to look at my case regarding A Notice Motion for Enlargement of

Time that I filed in my case and was again denied the right to see the case that I filed or even to know if the Motion was signed. (1st and 14th Amendment Violations)

5) November 11, 2002 out of frustration I made a video tape for my cable show of all of the corruption regarding aforementioned #1, #2, #3 and #4 and Jerry Bowles telephoned my cable show and stated that I was under a gag Order. The gag order did not exist however this stopped my cable show that I had for eight months.(Freedom of Speech) (Abuse of Power)
6) December 30, 2002, referencing #1, #2, #3, #4 and #5, I went back to court to look at the case that I filed. I was denied excess or to know the status of the case by Jerry Bowles, Judge. (1st and 14th Amendment Violations)
7) February 18, 2003. I was not served a summons and a gag order was not issued, however I was going to be held in contempt of court by Jerry Bowles, Judge and put in jail. I spoke with an official of the Federal Government who stated that I should not go, as I was not served a summons.(Conspiracy) (Abuse of Power)

Jerry Bowles is not protected by absolute judicial immunity because he was acting in his individual capacity, due to the fact that he was out of his jurisdiction, when he denied the Plaintiff, Connie Marshall, and her attorney, the right to go to court and present her side of the case. See Schuerer v. Rhodes 416 U.S. 232, 94 S. Ct. 683, 1687, 1974: Zeller v. Rankin, 101 S. Ct. 202, 451 U.S. 939, 68 L. Ed 2d 326: Rankin v. Howard 633F. 2d 844 (1980): Forester v. White 484 U.S. at 227-229, 108 S. Ct. at 544-545 (1987):

Westfall v. Erwin, 108 S. Ct 580 (1987): United States v. Lanier (March 1997): Harper v. Merckle, 638 F 2d 848 (5th Cir.) cert. denied, 454 U.S. 816, 102 S. Ct. 93, 70 L. Ed.2d 85 (1981): King v. Love, 766 F. 2d 962, 968 (6th Cir.) Id. at 11.

However, a judge will not be immune from suit where: 1) the judge acts in a non-judicial capacity; or 2) the judge acts in complete absence of all jurisdiction 12. A judge acts in the complete absence of all jurisdiction only if a matter was clearly outside the court's subject matter jurisdiction.

Jerry Bowles was out of his jurisdiction when he stopped the Plaintiff's Cable Show without a Court Order or a Gag Order. Jerry Bowles was out of his jurisdiction when he violated the Plaintiff's right to redress of grievances, as she has never been to court.

On page two, paragraph six of the United States Court of Appeals for the Sixth Circuits decision regarding this case, this court states the complaint filed by the Plaintiff was misplaced, thus excusing the untimely filing of the response from Jerry Bowles, (Judge) and denying the Plaintiff the Default Judgement. The Plaintiff states the following in response to this comment.

1) The complaint filed against Jerry Bowles (Judge) was mailed on February 4, 2003 by restricted delivery certified mail.
2) The complaint was signed for on February 5, 2003, by Ruth Moeller, long term employee and supervisor in the mailroom at the Judicial Center and the Hall of Justice.
3) Jerry Bowles (Judges) attempted to hold the Plaintiff in contempt of court on February 18, 2003. However, on this day he recused himself

from the case because of the federal complaint the Plaintiff filed against him, which proves that he received and was aware of the complaint that was filed against him in federal court.

4) An Entry of Appearance was made by D. Brent Irvin on February 20th, 2003.
Note - Since the complaint was mailed to Jerry Bowles and he had to secure an attorney this would mean that he received the complaint before February 20, 2003, which is the day his attorney filed his Entry of Appearance. In other words since the complaint was mailed to Jerry Bowles he apparently received it and contacted an Attorney, therefore they still had time to file an answer before the 20 day deadline, however an answer was not timely filed by the Respondents. A Notice of Leave was not filed and a Notice Motion for Enlargement of Time to file was also not filed by the Respondents.

Kentucky Civil Rule 4.01 (1) (a) states that, "Service could have been effectuated by sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee," **and it was.** The rule also states that: "To the extent that the United States Postal Regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the officer."

In closing, Plaintiff asked this court to review the decisions of the United States District Court Western District of Kentucky and the United States Court of Appeals for the

Sixth Circuit. Jerry Bowles (Judge) does not have the right or jurisdiction to violate United States Constitutional Law. and deny the Plaintiff the right to redress of grievances, freedom of speech, equal protection under the law. Also, he does not have the right to deny the Plaintiff life liberty or property without due process of law. These are federal rights granted to every citizen under the United States Constitution.

This Plaintiff asked this court to overturn the illegal decisions made by Jerry Bowles, Judge in his Order on March 5, 2002. The Plaintiff also asked this court to overturn the illegal Order entered in his court on January 18, 2002 to allow her to be reunited with her grandchildren.

The Plaintiff again states that though she has promptly and timely appeared for court in the court building even on one occasion arriving 15 minute early. The Plaintiff states that she has NEVER BEEN ALLOWED TO GO TO COURT WITH OR WITHOUT AN ATTORNEY.

The Plaintiff asked for $300,000 in damages for the years of pain and suffering she and her grandchildren have been forced to endure, due to the federal violations committed by Jerry Bowles, Judge.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals for the Sixth Circuit in this case was decided in a way that conflicts with applicable decisions of this court and other courts based on jurisdiction of state courts and federal courts. The decision is erroneous and the issues that it addresses is conflicting with the United States Constitution which awards every citizen the right to seek redress of grievances and freedom of speech for violations of their First Amendment Rights. The Court of Appeals decision is also conflicting with the Fourteenth Amendment which awards every citizen due process of law and equal protection under the law. The decision of the Court of Appeals regarding USPS service to the Respondent is conflicting with the evidence that was submitted regarding this case.

CONCLUSION

The Plaintiff, has NEVER been to court, because she was denied her Federal Right to go to court by Jerry Bowles Judge.

The Plaintiff, was denied her Federal Right to Attorney representation by Jerry Bowles, Judge and her Attorney was also not allowed in the courtroom on March 5, 2002

A fraudulent court order was signed by Jerry Bowles regarding the January 14, 2002 court date and Connie Marshall did not have any representation in court, and was denied her Federal Right to go to court.

Jerry Bowles violated Connie Marshall's Federal Right to freedom of speech when he telephoned her cable show and stopped her show, which she had for eight months.

This case was acknowledged by the respondent as an individual capacity complaint and not acknowledged as an official capacity complaint by the Respondent.

The United States Court of Appeals and the United States District Court have constantly misconstrued Connie Marshall's federal complaint as an Appeal. They have also continuously made no mention of the fact that Connie Marshall has stated in her complaint that she has NEVER BEEN TO COURT regarding her case with or without an attorney, therefore only the opposing side has been heard.

Jerry Bowles, Judge has denied Connie Marshall her FEDERAL RIGHTS which is out of his jurisdiction. Therefore, he is not protected by Res Judicata, Rooker Feldman, Judicial Immunity or any other law.

This petition for Writ of Certiorari should be granted.

Connie Marshall Date: 9-23-04

FILED
MAR 15, 2004
LEONARD GREEN, CLERK

No. 03-5818
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONNIE MARSHALL,

Plaintiff-Appellant

ORDER

v

JERRY BOWLES, Judge, Jefferson Family Court - Div #6,

Defendant- Appellee

Before: BOGGS, Chief Judge; DAUGHTREY, Circuit Judge; ALDRICH, District Judge*

Connie Marshall, proceeding pro se, appeals a district court judgment dismissing her complaint construed as filed pursuant to 42 U.S.C. §1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking custody of her grandchildren, other injunctive relief, and monetary damages, Marshall filed suit against a Kentucky domestic relations judge, Judge Jerry

*The Honorable Ann Aldrich, Unted States District Judge for the Northern District of Ohio, sitting by designation.

Bowles, on February 4, 2003. Marshall asserted tht Judge Bowles violated her constitutional rights, including her rights to due process and freedom of speech, by; 1) denying her access to a case file; 2) issuing a gag order that stopped her cable show; 3) failing to rule on a motion for an enlargement of time; 4) denying her access to a hearing; and 5) issuing fraudulent orders. Marshall thereafter filed a motion for a default judgment. Judge Bowles responded by filing a motion to dismiss, raising an assortment of defenses. Upon review, the district court dismissed the case on May 8, 2003, on the basis of res judicata, absolute judicial immunity, the Federal Courts Improvement Act of 1996, and the Rooker Feldman doctrine. The district court denied all other pending motions as moot.

In her timely appeal , Marshall reasserts her claims and contends that the district court erred by denying her motion for a default judgment.

Upon de novo review, we conclude that the district court lacked subject matter jurisdiction, see Fed. R. Civ. P. 12 (b)(1); Duncan v. Rolm Mil-Spec Computers, 917 F.2d 261, 263 (6th Cir. 1990), because Marshall's claims are barred by the Rooker-Feldman doctrine. Under this doctrine, federal courts lack jurisdiction to review a case litigated and decided in state court as only the United States Supreme Court has jurisdiction to correct state court judgments. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 & n. 16 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). A fair reading of the complaint reveals that Marshall's federal case is an impermissible appeal of state court judgments as it raises specific grievances regarding decisions of a Kentucky domestic relations court. Thus, the district court lacked jurisdiction over any challenge Marshall is making to the legal proceedings held in Judge Bowle's court.

Even if subject matter jurisdiction had existed, the complaint was still subject to dismissal because Judge

Bowles is entitled to judicial immunity. A judge performing judicial functions is absolutely immune from suit seeking monetary damages. Mireless v. Waco, 502 U.S. 9, 9-10 (1991). Judicial immunity is available even if the judge acts erroneously, corruptly, or in excess of his or her jurisdiction. Id. at 11. However, a judge will not be immune from suit where: 1) the judge acts in a non-judicial capacity; or 2) the judge acts in the complete absence of all jurisdiction. Id. at 11-12. A judge acts in the complete absence of all jurisdiction only if a matter was clearly outside the court's subject matter jurisdiction. King v. Love, 766 F.2d 962, 966 (6th Cir. 1985) All of the alleged acts by Judge Bowles are judicial functions exercised under proper jurisdictional authority and thus Judge Bowles is entitled to absolute judicial immunity.

We also conclude that the district court did not abuse its discretion by denying Marshall's motion for default judgment based on Judge Bowles's untimely filing of an answer due to the complaint getting misplaced in the courthouse mail system. See Eitel v. McCool, 782 F.2d 1470,1472(9th Cir. 1986). Marshall failed to allege that she suffered any prejudice form the delay in the filing of the answer, her claims lacked merit, her complaint was vague, and the amount of money at stake $300,000 was substantial.

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green
Clerk

App. 2

FILED
APR 20 2004
LEONARD GREEN, Clerk

Case No: 03-5818

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

CONNIE MARSHALL

Plaintiff - Appellant

v

JERRY BOWLES, Judge, Jefferson Family Court - Div. #6

Defendant - Appellee

BEFORE: BOGGS, Chief Judge; DAUGHTREY, Circuit Judge; ALDRICH, District Judge*

It is ORDERED that the petition for rehearing which was received one (1) day late, is accepted for filing.

It is FURTHER ORDERED that the petition for rehearing be and it hereby is DENIED.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green
Leonard Green, Clerk

*The Honorable Ann Aldrich, United States District Judge for the Northern District of Ohio, sitting by designation.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:03CV-70-H

CONNIE MARSHALL PLAINTIFF

V.

JERRY BOWLES (JUDGE) DEFENDANT

MEMORANDUM AND ORDER

Defendant, Judge Jerry Bowles of the Jefferson County Family Court, has moved to dismiss the complaint filed against him. Plaintiff's complaint alleges that Bowles denied her access to a sealed parental rights case file; that he somehow issued a gag order and stopped her cable show; that he failed to sign an order filed by her in court; and that he issued an illegal order apparently disposing of the case. Plaintiff did not file an appeal in state court to any of the matters about which she now complains, but has filed this case in federal court.

Any number of reasons counsel dismissal of this rather vague complaint. First, this action looks to be a collateral attack on a state court action which was never appealed. Consequently, it appeared that the state court action is final and that finality acts as either res judicata or collateral estoppel as to any claims which she now makes in this Court.

Moreover, judges have absolute immunity from individual liability or from defending claims arising out of their judicial acts as long as they do not act in the clear

absence of all jurisdiciton. Stump v. Sparkman, 435 U.S. 349, 356-357 (1978); Ireland v. Tunis, 113 F. 3d1435, 1440 (6th Cir. 1997). In the instant case, Judge Bowles was acting within his judicial authority at all times. Plaintiff has not made nor can this Court envision an allegation that judge Bowles was without jurisdiction in making his rulings. Consequently, as to all the actions complained of, Judge Bowles appears to have absolute judicial immunity.

Either of these reasons would be sufficient for the Court to grant Defendant's motion to dismiss. Moreover, the court has reviewed Defendant's memorandum in support of that motion and finds other grounds which would supprot the motion. In particular, Defendant cites the Federal Courts Improvement Act of 1996 and the Rooker-Feldman doctrine as barring any suit against Judge Bowles under these circumstances. The Court believes that both this statute and the judicial doctrine also counsel dismissal of these claims.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that the Defendant's motion to dismiss is SUSTAINED and Plaintiff's complaint is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that all other pending motions are DENIED AS MOOT.

This is a final and appealable order.

This 7th day of May, 2003.

/s/John Heyburn
John G. Heyburn II
Chief Judge, U.S. District Court

cc: Connie Marshall, Pro Se
D. Brent Irvin

ENTERED
May 08, 2003
Jeffrey A. Apperson, Clerk
BY /s/T. Carter
Deputy Clerk

App. 4

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CASE NO. 3:03 CV-70-H

CONNIE MARSHALL PLAINTIFF

v. ORDER

JERRY BOWLES, (JUDGE) DEFENDANT

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Plaintiff, Connie Marshall, having moved to reconsider the Memorandum Opinion and Order dismissing her complaint, the defendant judge having responded, and the Court being sufficiently advised, plaintiff's motion for reconsideration is DENIED.

So ORDERED, THIS 30TH DAY OF MAY, 2003.

/s/John G. Heyburn II
John G. Heyburn II
Judge, United States District Court

ENTERED
JUN 02 2003
Jefferey A. Apperson, Clerk
BY /s/T. Carter
Deputy Clerk

Tendered by:
D. Brent Irvin
Assistant Attorney General